

SEP 22 2010

SEP 15 2010

#6

OFFICE OF PETITIONS

PTO/SB/65 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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2010 SEP 16 PM 4:03

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**Docket Number (Optional)
31227598-000001Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450
Fax: (571) 273-8300

09/20/2010 DALLEN 00000004 5967784

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1940.00 OP

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent Number: 5,967,784Application Number: 09/114,697Issue Date: October 19, 1999Filing Date: January 13, 1998

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable:

The above-identified patent:

☐ is a reissue of original Patent No. _____ original issue date _____;
original application number _____
original filing date _____☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application
_____ filed on _____**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

September 15, 2010
DatePaul Lilly
SignaturePaul Lilly
Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

5340

SEP 15 2010

PTO/SB/85 (03-09)

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1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input checked="" type="checkbox"/> \$ 1240	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 1240

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700

5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ _____
- ☐ Please charge Deposit Account No. _____ the sum of \$ _____
- ☒ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

- ☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 50-3420

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7. OVERPAYMENT

As to any overpayment made, please

☒ Credit to Deposit Account No. 50-3420

OR

☐ Send refund check

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

/Michael J. Powers/

Signature(s) of Petitioner(s)

September 15, 2010

Date

Michael J. Powers

Typed or printed name(s)

Registration Number, if applicable

1303 Black Sage Circle

805-219-0204

Address

Telephone Number

Nopomo, CA 93444

Address

ENCLOSURES:

- ☒ Maintenance Fee Payment
☒ Statement why maintenance fee was not paid timely
☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
☒ Other: Declaration in Support of Petition to Revive

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37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

/Tamsen Valoir/

Signature

Tamsen Valoir

Type or printed name

September 15, 2010

Date

41,417

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

See attached Declaration of Michael J. Powers.

(Please attach additional sheets if additional space is needed)

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PATENT
31227598-000001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Powers	\$		RECEIVED
	\$	Art Unit: 3732	
Patent No.: 5,967,784	\$		SEP 22 2010
	\$		
Issued: Oct. 19, 1999	\$	Examiner: LEWIS, RALPH A	OFFICE OF PETITIONS
	\$		
Title: Hand held device for	\$		
reducing the discomfort associated with	\$		
the adjusting of orthodontic appliances	\$		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:


DECLARATION IN SUPPORT OF PETITION TO REVIVE

1. I am Michael J. Powers, sole inventor of U.S. Patent No. 5,967,784.
2. On August 3rd 2010, I was approached by Michael Kaufman, Vice President Marketing & Business Development for OrthoAccel Technologies Inc.
3. Mr. Kaufman was interested in licensing my patent, but told me it has lapsed for failure to pay fees in about 2007.
4. I was not aware that the patent had lapsed for failure to pay fees.
5. My patent attorney died before 2007. He was one of two or three members of a small local law firm, only one of whom remains in practice.
6. That firm has no records of having attempted to notify me about the fee deadline, but assured me it was their standard practice.

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7. My orthodontic practice dissolved in about 2004 due to my disability, whereon I sold my practice to another practitioner and closed my office.
8. I have moved four times since then.
9. If the law firm did attempt to notify me about the coming fee deadline, that notice never reached me.
10. On discovering the facts surrounding the patent lapse, I have quickly and diligently prepared to revive the patent.
11. I did not intend to allow this patent to lapse. Further, the entire period of delay in filing the from its deadline until now was unavoidable.
12. There is a large entity statement in the file for this patent, but I do not know who filed this document, and I qualify as a small entity. At this time there is no licensee for the patent, but OrthoAccel is interested in licensing this patent and is also a small entity.
13. I therefore request the Commission for Patents to please revive this patent now.
14. I declare further that all statements made herein of my own knowledge are true; that all statements made herein on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application and any registration resulting therefrom.

Date: August 23, 2010



Michael J. Powers
1303 Black Sage Circle
Nipomo, CA 93444
Phone: (805) 219-0204